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COURT OF APPEAL, FOURH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re MAYA N. et al., Persons Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

MARI N.,

Defendant and Appellant.

D053452

(Super. Ct. No. J516782A-B)

APPEAL from an order of the Superior Court of San Diego County, Yvonne E.
Campos, Judge. Affirmed.

Mari N. appeals an order made at a six-month family maintenance hearing continuing services and continuing juvenile court jurisdiction for an additional six months. She contends substantial evidence did not support the order, and the court violated her constitutional rights when it did not terminate jurisdiction. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On July 30, 2007, the San Diego County Health and Human Services Agency (the Agency) petitioned on behalf of nine-year-old Maya N. and two-year-old Lily N. (the children) under Welfare and Institutions Code section 300, subdivision (d), alleging they were at substantial risk of sexual abuse in that multiple images of children, including nude photographs of their cousins and other children, were on the family computer; their father, Jeremy N., had masturbated in front of their cousins and had a history of indecent exposure; and their mother, Mari N., had not protected them. The court ordered the children detained.

The social worker reported Jeremy was a member of the United States Marine Corps and Mari was Japanese. It was alleged that while Jeremy was stationed in Okinawa, Japan, he had exposed himself, had masturbated in front of the children's cousins and had one of the cousins touch his penis. Photographs on Jeremy's computer included multiple images of child pornography and images of Maya and other children nude in a bathtub. An agent with Navy Criminal Investigative Services stated that on the computer there were more than 500 images of "hard core" child pornography, 46 images of the children's cousins in sexually suggestive poses and 105 pictures taken with a hidden camera in a bathroom. In addition, Okinawa City Police had investigated allegations that Jeremy had exposed himself to two teenage girls in 2000.

Mari was very upset when the children were taken from the family home. She denied having any concern about Jeremy being around Maya and Lily. Jeremy denied having child pornography on his computer and said Mari's sister and her husband made

up the allegations. Maya denied any sexual abuse and said no one had taken photographs of her while she was nude. She said she occasionally showered with Mari or Jeremy, but this did not make her feel uncomfortable. She acknowledged that Jeremy had photographed her in a bubble bath, but said she did not mind that.

The social worker opined Mari minimized the risk to the children from Jeremy. On September 6, 2007, the court granted her request for a restraining order against him. On September 11 Mari and Jeremy submitted to the petitions on the basis of the social worker's reports and the court found the allegations true. It declared the children dependents of the juvenile court, placed them with Mari, ordered services for both parents and ordered Jeremy would have supervised visits and supervised telephone contact with the children.

Both parents began participating in therapy; Jeremy completed a parenting class and Mari participated in in-home parenting education. The social worker reported Mari, Jeremy and Maya continued to attest to Jeremy's innocence, but parenting education and therapy had helped Mari understand differences in acceptable behavior between Japanese and American cultures related to personal boundaries. Mari was very protective of the children, but she believed her sister had falsely accused Jeremy and said others who used the family computer could have placed the child pornography there. Maya said her cousins made up the allegations to get Jeremy in trouble. Jeremy was being prosecuted in criminal court for charges related to the allegations of child sexual abuse. His interaction with his children during visits was always appropriate.

At the six-month family maintenance review hearing in May and July 2008, a social worker who testified as an expert on child sexual abuse opined Maya and Lily were at high risk from Jeremy because of his past history and possession of child pornography. The social worker did not believe he had yet received sufficient treatment or that Mari could fully protect the children.

The family's social worker recommended continuing family maintenance services and that the children remain with Mari, but that Jeremy remain out of the home and have supervised visitation. The social worker said both parents were participating in therapy, but had not acknowledged the children were at risk.

The psychologist who evaluated Jeremy testified testing showed Jeremy had a strong sexual interest in adult women and no disorders to indicate he was a sex offender. However, the psychologist agreed the images on the computer and allegations of public indecency were of concern.

The parties stipulated if Maya were to testify she would say she wanted Jeremy to return home and was not afraid or uncomfortable around him.

After considering the documentary evidence, testimony and argument, the court denied the parents' request to terminate jurisdiction, finding the Agency had shown a continuing concern of a substantial risk of future sexual abuse. The court found reasonable services had been offered and the parents had made substantive progress. It continued the children as dependents of the court, continued their placement with Mari and set a review hearing in six months.

DISCUSSION

Mari contends substantial evidence does not support the court's order continuing jurisdiction past the six-month review date.

The juvenile court must terminate dependency jurisdiction unless the social services agency establishes that conditions remain to justify the court taking jurisdiction of the children. (Welf. & Inst. Code, § 364, subd. (c); *In re N.S.* (2002) 97 Cal.App.4th 167, 173.) Welfare and Institutions Code section 364, subdivision (c) provides that after evidence is presented in a juvenile dependency hearing,

"the court shall determine whether continued supervision is necessary. The court shall terminate its jurisdiction unless the social worker or his or her department establishes by a preponderance of evidence that the conditions still exist which would justify initial assumption of jurisdiction under Section 300, or that those conditions are likely to exist if supervision is withdrawn."

The reviewing court considers a juvenile court's decision to continue its jurisdiction under the substantial evidence test. (*In re N.S.*, *supra*, 97 Cal.App.4th at p. 172.) A reviewing court must uphold a juvenile court's findings and orders if they are supported by substantial evidence. (*In re Amos L.* (1981) 124 Cal.App.3d 1031, 1036-1037.) " ' The rule is clear that the power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the conclusion reached by the trier of fact.' " (*In re Tanis H.* (1997) 59 Cal.App.4th 1218, 1227.) "[W]e must indulge in all reasonable inferences to support the findings of the juvenile court [citation], and we must also ' . . view the record in the light most favorable to the orders of the juvenile court.' " (*In re Luwanna S.* (1973) 31 Cal.App.3d 112, 114.) The appellant bears the burden to show the

evidence is insufficient to support the court's findings. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

Substantial evidence supports the court's order continuing jurisdiction. Mari and Jeremy submitted on the basis of the social worker's reports to petitions which alleged they had placed the children at substantial risk of sexual abuse because of the multiple images of nude children on the family computer and because Jeremy had masturbated in front of the children's cousins and had a history of indecent exposure. Yet, after months of therapy and parenting education, both parents continued to deny Jeremy presented any risk to the children.

Mari was very protective of Jeremy and told her therapist she did not believe he would be a threat to Maya and Lily. She said her sister had falsely accused him and someone else had put the child pornography on the computer. Mari's therapist said Mari had made progress, but recommended 13 additional sessions of therapy. The social worker who testified as an expert witness opined Mari needed to acknowledge the risk in order to make progress. She was concerned Mari would not protect the children sufficiently because she would not believe the allegations unless Jeremy was found guilty in criminal court. Jeremy also continued to deny the allegations. He was attending therapy, but had not yet attained all of the goals his therapist had set for him. The expert witness testified Jeremy needed additional services and had not yet made sufficient progress with taking responsibility, recognizing trigger points and planning to prevent molestation. Substantial evidence supports the order continuing services and juvenile court jurisdiction.

Mari's suggestion that the court used the wrong standard of proof in making its findings is not supported. When the court stated "that is whether or not, in fact, it can be determined to a reasonable doubt standard, not my purposes, but for other purposes whether or not [Jeremy] is, in fact, a sexual predator," the court appeared to be referring, not to the dependency proceedings, but to Jeremy's criminal case. The court expressly stated, "The legal standard under which I am to resolve all of this is the preponderance of the evidence standard."

We also reject Mari's argument the court was not able to make up its mind. Although the court did comment that whether Jeremy was a sexual predator who would be of future risk to his children was a "great unknown," it stated factors in the case, including alleged prior incidents of indecent exposure to teenage girls, the images on the computer, and photographs of children in the home, led it to find the conditions that justified initial jurisdiction remained and continued services were necessary. In deciding to continue jurisdiction, the court stated:

"the longer that both the girls and [Mari] have contact with service providers and the more education they receive about being protective of each other, themselves, their bodies, the greater safety there is if they're being able to avoid any future molestation, be it from [Jeremy] or any other potential perpetrator. [¶] . . . [¶]

" . . . I do believe that the Agency has established by preponderance of the evidence that the protective concerns continue as to the possible risk of future sexual abuse of these minors in light of the historical factors attendant to [Jeremy's] history."

As to Mari's argument the court violated her constitutional rights to parent her children, because we hold substantial evidence supports the court's findings and orders

continuing services and continuing juvenile court jurisdiction, Mari has not shown a violation of her constitutional rights.

DISPOSITION

The order is affirmed.

O'ROURKE, J.

WE CONCUR:

HUFFMAN, Acting P. J.

NARES, J.